



City of Marietta

205 Lawrence Street
Post Office Box 609
Marietta, Georgia 30061

Meeting Minutes CITY COUNCIL

R. Steve Tumlin, Mayor
Annette Paige Lewis, Ward 1
Griffin "Grif" L. Chalfant, Jr., Ward 2
Johnny Sinclair, Ward 3
Irvan A. "Van" Pearlberg, Ward 4
Rev. Anthony C. Coleman, Ward 5
James W. King, Ward 6
Philip M. Goldstein, Ward 7

Wednesday, July 13, 2011

7:00 PM

Council Chamber

Presiding: R. Steve Tumlin, Mayor

Present: Grif Chalfant, Johnny Sinclair, Van Pearlberg,
Rev. Anthony Coleman, Jim King, and Philip M. Goldstein

Absent: Annette Lewis

Also Present:

William F. Bruton, Jr. City Manager

Douglas R. Haynie, City Attorney

Stephanie Guy, City Clerk

CALL TO ORDER:

Mayor R. Steve Tumlin called the meeting to order at 7:13 p.m.

INVOCATION:

Mayor Tumlin called upon Council member Johnny Sinclair to give the invocation.

PLEDGE OF ALLEGIANCE:

Mayor Tumlin asked everyone to remain standing for the pledge of allegiance.

PRESENTATIONS:

20110572 Service Award

Presentation of a Service Award to Francine M. Wilkins for her service on the Marietta Civil Service Board.

Presented

20110599

Swearing-In

Swearing-in of Phyllis Gingrey Collins as a Municipal Associate Judge for the City of Marietta.

Oath Administered**PROCLAMATIONS:****ANNOUNCEMENTS OF GENERAL COMMUNITY INFORMATION BY THE MAYOR, COUNCIL AND/OR CITY MANAGER:****CONSENT AGENDA:**

Consent agenda items are marked by an asterisk (*). Consent items are approved by majority of council. A public hearing will be held only for those items marked by an asterisk that require a public hearing (also noted on agenda).

Mayor Tumlin called upon Mayor Pro tem, Johnny Sinclair, to preside over this portion of the meeting. Mayor Pro tem Sinclair briefly explained the consent agenda process. The following amendments were made to the consent agenda:

-under Minutes: Agenda item 20110611, June 8, 2011 minutes, was amended on page 11 to state that the Rules and Procedures of Council were Moved Forward, as it would require a second reading on the July 13, 2011 agenda.

-under Economic/Community Development: Agenda item 20110589 was added to the consent agenda.

-under Public Works: Agenda item 20110576 was added to the consent agenda, with Council member Goldstein opposed.

-under Other Business: Agenda item 20110621 was added to the consent agenda, with Council member Sinclair opposed and Council member Goldstein abstaining.

-under Other Business: Agenda item 20110618 was amended to read, "Motion to approve the Contract for Sale of property by Robert O. Herbert and Martha J. Herbert to the City of Marietta, Georgia, conditioned upon the sellers providing a clear title and conditioned upon the City obtaining a satisfactory environmental report."

-under Other Business: Agenda item 20110645 was removed from the agenda.

Mayor Pro tem Sinclair opened the public hearing for those items on the consent agenda requiring a public hearing. Seeing no one wishing to speak, the public hearing was closed.

In response to a citizen inquiry, Council member King clarified the location Kennesaw Mountain to Chattahoochee Trail/South Section. In accordance with the disclosure previously submitted, Council member Goldstein left the dais during this portion of the meeting.

Council member Goldstein returned to the dais.

A motion was made by Council member King, seconded by Council member Coleman, to approve the consent agenda as modified. The motion carried by the following vote:

Vote: 6 - 0 - 0

Approved

with the following exceptions:

Council member Goldstein abstaining on agenda items 20110485, 20110577 and 20110621.

Council member Goldstein voting against agenda item 20110491.

Council member Sinclair voting against agenda item 20110621

MINUTES:

20110611 Regular Meeting - June 8, 2011

* Review and approval of the June 8, 2011 regular meeting minutes.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 0

Approved

*** 20110612 Special Meeting - June 29, 2011**

Review and approval of the June 29, 2011 special meeting minutes.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 0

Approved

MAYOR'S APPOINTMENTS:

CITY COUNCIL APPOINTMENTS:

*** 20110594 Board of Zoning Appeals Appointment**

Motion to re-appoint Steve Carson to the Board of Zoning Appeals (Ward 5) for a three-year term.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 0

Approved

ORDINANCES:

*** 20110514 Z2011-07 Robert Snyder 1065 Canton Road**

Ord 7543

Z2011-07 [REZONING] ROBERT SNYDER request rezoning for property located in Land Lot 09440, District 16, Parcel 0080, 2nd Section, Marietta, Cobb County, Georgia and being known as 1065 Canton Road from CRC (Community Retail Commercial) to LI (Light Industrial). Ward 5.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 0

Approved

20110515**Z2011-08 Cynthia L. Patton 269 Cole Street**

Z2011-08 [REZONING] CYNTHIA L. PATTON request rezoning for property located in Land Lot 11600, District 16, Parcel 0960, 2nd Section, Marietta, Cobb County, Georgia and being known as 269 Cole Street from R-4 (Single Family Residential 4 units/acre) to OIT (Office Institution Transitional). Ward 5.

Mayor Tumlin opened the public hearing. City Attorney Douglas Haynie explained the rules of order and swore in those wishing to speak.

Attorney for the applicant, Kevin Moore, with Moore Ingram, requested rezoning for property located at 269 Cole Street from R-4 (Single Family Residential 4 units/acre) to OIT (Office Institution Transitional), to be used by Cynthia Patton for her law office. Mr. Moore presented a drawing showing the exact location of the property and the zoning of the surrounding property. Mrs. Patton also spoke regarding this matter, further explaining the intended use for the property. She also mentioned that the property has been vacant for four (4) years and was recently put up for sale.

John Pierson, who resides at 184 Forest Ave, expressed concern regarding the proposed rezoning. Mr. Pierson and other residents of the Forest Hill community would like this area to remain an intown residential neighborhood.

Discussion was held by Council.

Motion was made to deny the rezoning request.

The motion was made by Council member Coleman, seconded by Council member Pearlberg, that this matter be Denied. The motion carried by the following vote:

Vote: 5 - 1 - 0

Approved to Deny

Voting Against: Philip M. Goldstein

20110516**Z2011-09 155 Montgomery Street rezoning**

Discussion of stipulations regarding request to rezone 155 Montgomery Street from R3 to R4

Council member Goldstein disclosed that the engineer for this project is and has done work for an entity that he owns and/or for himself.

Council member Chalfant disclosed that he has done business with the engineer for this project.

Mayor Tumlin opened the public hearing. City Attorney Douglas Haynie explained the rules of order and swore in those wishing to speak.

The applicant, Glenn F. Drake, requested rezoning for property located at 155 Montgomery Street from R3, Single Family Residential (3 units/ac) to R4, Single Family Residential (4 units/ac), in order to develop a 4-lot subdivision. David Hunt, with New World Home, and Jasper Wayne Procter also spoke regarding this matter, further explaining the energy efficient and sustainable types of homes proposed.

Larry Panetta, who resides at 362 Cherokee Street, expressed some concern regarding the development and how it would affect his adjacent property.

Discussion was held by Council regarding possible zoning stipulations, the square footage of the proposed homes, the facade and building materials.

A motion was made by Council member Coleman, seconded by Council member Pearlberg, to deny the rezoning request.

A substitute motion was made by Council member Goldstein, seconded by Council member King, to table this matter, with encouragement to the applicant to attend the next Judicial/Legislative Committee meeting. The motion carried by the following vote:

Vote: 4 - 3 - 0

Approved to Table

Voting Against: Johnny Sinclair, Van Pearlberg and Rev. Anthony Coleman

(Mayor Tumlin voted on this matter due to the tie vote.)

RESOLUTIONS:

CITY ATTORNEY'S REPORT:

* **20110620 Denial of Claim**

Denial of claim of Brenna Bentley Bitler f/k/a Brenna Bentley.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 0

Approved to Deny Claim

CITY MANAGER'S REPORT:

MAYOR'S REPORT:

COMMITTEE REPORTS:**1. Economic/Community Development: Grif Chalfant, Chairperson***** 20110588 FY11 CDBG Sub-Recipient Agreement**

Resolution authorizing the execution of the FY11 CDBG Sub-Recipient Agreement with Cobb County allowing the receipt of \$626,817 in US Department of Housing and Urban Development Block Grant Funds.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0 Approved

*** 20110589 HOME Down Payment Assistance**

Resolution authorizing the reallocation of \$100,000 in 2006 and 2007 HOME program funds from the CHI Project MINT to the MHA for down payment assistance used for properties that are inside the city limits of Marietta.

Smith, Tumlin, McCurley, and Patrick law firm of which Mayor Tumlin is affiliated, provides legal services in the real Estate area for Marietta Housing Authority.

Council member Sinclair disclosed that he has sold several homes to policemen and firemen who have participated in the MIHOM program. Council member Sinclair recuses himself, as a realtor, from the vote and discussion on this matter.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0 Approved

*** 20110590 Slum/Blight Demolition**

Resolution approving the use of FY11 CDBG Slum and Blight Clearance funds for demolition of spot Slum and Blight located at 97 Rigby Street and waiving all liens associated with demo costs for the lower income owner.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0 Approved

2. Finance/Investment: Annette Lewis, Chairperson*** 20110485 FY2012 Welcome Center Budgets and Marketing Plan**

Motion to approve the FY2012 Budgets and Marketing Plan for the Marietta Welcome Center.

Council member Goldstein disclosed that he is the owner of and a general manager for the Herbert S. Goldstein Family Limited Partnership that owns the Earl Strand Theater at 115-119 North Park Square, Marietta GA. The tenant is Friends of the Strand, Inc. The tenant has an agreement with the Atlantic Lyric Theater, Inc., to use the facility. Council member Goldstein also owns the properties occupied by and leased to Theatre in the Square, Inc. Council member Goldstein abstains on and will not participate on allocation of funds to the above three (3) entities.

Council member Goldstein is or has been a member of: Friends of Brumby Hall, Inc., Cobb Landmarks and Historical Society, Inc., Marietta-Cobb Museum of Art; and the Marietta Museum of History. He is also the Council's appointed member serving on the board of the Marietta Welcome Center and Visitors Bureau, Inc.

Council member Pearlberg disclosed that he is a member of Cobb Landmarks & Historical Society, Marietta-Cobb Museum of Art and has served on the Marietta Museum of History Board. He subscribes to the Atlanta Lyric Theatre and has performed at the Earl Smith Strand Theatre. Further, his wife is Chairperson of the Georgia Ballet

Mayor Tumlin has served as a director, but is currently not serving, of the following organizations being considered for sponsorships: Marietta-Cobb Museum of Art; Theatre in the Square, Inc.; Marietta Museum of History, Inc.; and Friends of the Strand, Inc. Additionally, Mayor Tumlin has provided legal services to Friends of the Strand, Inc. and accounting services to Marietta Museum of History, Inc. Mayor Tumlin has been/is a Member of Brumby Hall, Inc. and Cobb Landmarks & Historical Society.

Council member Sinclair disclosed that he is a past Chairman of the Board of the Art Museum and has been a member of Cobb Landmarks, Welcome Center and Museum of the History.

This Matter was Approved on the Consent Agenda.

Vote: 5 - 0 – 1 **Approved**
Abstaining: Philip M. Goldstein

* **20110565**

Government Accounting Standards Board (GASB) Statement No. 54

Motion to approve required policy changes mandated by GASB for special revenue funds and fund balance classifications applicable to the City of Marietta.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0 **Approved**

3. Judicial/Legislative: Philip M. Goldstein, Chairperson*** 20100926 Delk/Franklin Road LCI Study Amendment**

Resolution approving a Cobb County request to make amendments to the Franklin Road LCI boundary area and project listing, as well as a city request to amend LCI language.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 0

Approved

20110370 Crosswinds Subdivision

Motion to revise the original letter of stipulations dated August 24, 2005, for Crosswinds Subdivision, located in Land Lots 9 and 64, District 17, 2nd Section, Marietta, Cobb County, Georgia, so as to reduce the front setback from 25 feet to 15 feet for the undeveloped lots within the subdivision. However, in no case shall the length of the driveway - measured from the face of the garage to the right of way and/or sidewalk - be less than 20 feet. Prior to receiving a building permit, the builder shall submit a site plan to scale showing the property lines, setback lines, location of the house, and sidewalk.

Mayor Tumlin called forward those wishing to speak regarding this matter.

Jetson Hall, planning and engineering consultant, requested to revise the original letter of stipulations for the Crosswinds Subdivision. The revisions would include the reduction of the front setback from 25 feet to 15 feet for the undeveloped lots within the subdivision.

Discussion was held regarding the possibility of a reduction in the rear setback and the specific lots needing the reduction.

There was a general consensus to table this matter until later in the meeting to allow the applicant time to indicate the specific lots on the plan that may need a reduction in the rear setback.

This matter was Tabled until later in the meeting.

*** 20110491 Rules and Procedures of Council****[Ord 7544](#)**

Motion to approve an Ordinance amending Marietta City Code Section 1-4-040 entitled "Rules and Procedures of Council."

This Matter was Approved on the Consent Agenda.

Vote: 5 - 1 - 0

Approved

Voting Against: Philip M. Goldstein

Second Reading

* **20110492 Sign Ordinance**

Motion to authorize advertisement of proposed changes to the Sign Ordinance.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0 Approved

4. Parks, Recreation and Tourism: Johnny Sinclair, Chairperson

* **20110603 Constitution Day Street Closure Request**

Motion to approve closure of N. Park Square and E. Park Square from 11:30 am to 7 pm to accommodate the setup and teardown of a Constitution Day event on Sunday, September 18, 2011 with participation hours not to exceed 5 pm.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0 Approved

5. Personnel/Insurance: Van Pearlberg, Chairperson

* **20110585 Amendment to the Personnel Rules and Regulations**

[Ord 7545](#)

Motion approving amendments to the Personnel Rules and Regulations contained in Part 4 of the Code of Ordinances including necessary revisions and corrections to the code section.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0 Approved

* **20110604 Marietta Redevelopment Corporation**

Motion to approve the recommendation of the Marietta Redevelopment Corporation (MRC) Board of Directors to appoint Ron Francis as Chairman and Terry Lee as Vice Chairman of the Marietta Redevelopment Corporation for a one (1) year term.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0 Approved

6. Public Safety Committee: Anthony Coleman, Chairperson

7. Public Works Committee: Jim King, Chairperson

* **20110359 1994 SPLOST Project Reallocations**

Motion authorizing the reallocation of \$256,654.71 of 1994 SPLOST Municipal Sidewalks funds and \$32,172.84 of 1994 SPLOST School Sidewalks funds to the 1994 SPLOST Roswell Street Improvement Project between East Park and Cobb Parkway for use as matching funds for the Roswell Street Streetscapes Livable Centers Initiative project Phase 1.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0 Approved

* **20110353 2005 SPLOST Project Reallocations**

Motion authorizing the reallocation of 2005 SPLOST Project Funds per Reallocation Option 1, reducing the overall 2005 SPLOST project budget by \$1,691,522.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0 Approved

* **20110360 Remnant Property Sales**

Motion approving to market the following remnant properties:

994 Roswell Street
470 Roswell Street
942 Roswell Street
416 Roswell Street

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0 Approved

* **20110575 Tower Road at North Avenue and Cogburn**

Motion authorizing WellStar to continue with design and installation of the traffic signal at the intersection of North Avenue and Tower Road. All design and installation work will be subject to review and approval by the Public Works Director or his designee. WellStar will be responsible for 100% of the design and installation cost.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0 Approved

*** 20110576 City Truck Ordinance**

Motion authorizing Public Works to investigate acquiring right of way for constructing radius improvements at the intersection of Marr Avenue with Roselane Street and to install the following signs:

Truck Route signs in each direction along a route beginning at the intersection of Tower Road and Roselane Street, north to Marr Avenue, to Marble Mill Road, to Church Street Extension.

Supplemental sign plates for the southbound route identifying the route as “Tower Road Delivery Truck Access.”

This Matter was Approved on the Consent Agenda.

Vote: 5 - 1 - 0 **Approved**

Voting Against: Philip M. Goldstein

* **20110577** **Kennesaw Mountain to Chattahoochee Trail/South Section**

Motion approving a contract with GDOT for construction of the South Section Trail.

Council member Goldstein disclosed that he and/or an entity(s) that he owns, owns property(s) on Waverly Way (along the railroad) and leases and/or owns other property between Whitlock Avenue and West Anderson Street that may possibly be part of the proposed project.

This Matter was Approved on the Consent Agenda.

Vote: 5 - 0 - 1 **Approved**

Abstaining: Philip M. Goldstein

SCHEDULED APPEARANCES:

UNSCHEDULED APPEARANCES:

Bret Bittner, who resides at 422 Alexander, expressed concern regarding an issue he experienced with Marietta Power due to a power outage.

20110370 **Crosswinds Subdivision**

Mayor Tumlin called forward Mr. Hall regarding Crosswinds Subdivision. Mr. Hall read aloud the specific lots needing a reduction in the rear setback.

A motion was made by Council member Chalfant, seconded by Council member Goldstein, to revise the original letter of stipulations dated August 24, 2005, for Crosswinds Subdivision, located in Land Lots 9 and 64, District 17, 2nd Section, Marietta, Cobb County, Georgia, so as to reduce the front setback from 25 feet to 20 feet; and to reduce the rear yard setback from 30 feet to 25 feet for the nineteen (19) undeveloped lots, specifically those lots identified by lot number as follows: 1, 2, 10, 17, 18, 19, 20, 21, 24, 26, 43, 44, 45, 50, 51, 52, 53, 54, and 55.

However, in no case shall the length of the driveway - measured from the face of the garage to the right of way and/or sidewalk - be less than 20 feet. Prior to receiving a building permit, the builder shall submit a site plan to scale showing the property lines, setback lines, location of the house, and sidewalk.

The motion carried by the following vote:

Vote: 6 - 0 - 0

Approved

OTHER BUSINESS:

* **20110571**

**V2011-24 Anderson Street Group, LLC & Anderson Street Group II, LLC
184 & 192 Anderson Street (Ward 5).**

Motion to approve the following variance for property located in Land Lot 12320, District 16, Parcels 0040 and 0050 and being known as 184 and 192 Anderson Street. Variance to locate an off-premise sign for 192 Anderson Street on the property at 184 Anderson Street (aka 188 Anderson Street). The variance shall only apply to the free standing sign located on the property at 184 Anderson Street, as shown on the rendering filed herewith. Further, the user of the sign shall be a tenant of 184 Anderson Street (aka 188 Anderson Street) or 192 Anderson Street, Marietta, GA.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 0

Approved

20110570

Vehicle Immobilization Ordinance

Consideration of the Mayor's veto of the Vehicle Immobilization Ordinance as presented under file number 20110266.

Philip M. Goldstein disclosed that Benny and Sue Robinson (Robinson's Coins) lease parking spaces from him at 48 Atlanta Street, Marietta. Further and I own property at 19-21 Atlanta Street, Marietta, as well as many other properties in Downtown Marietta and in the City of Marietta. Other family members and entities also own property in the City of Marietta.

Council Member Goldstein disclosed that he has an agreement with Gary Eubanks on property located at or near Denmead Street, Marietta, GA.

Mayor Tumlin disclosed that he has had a business relationship with Eubanks, but does not any longer.

Council Member Goldstein disclosed that Gary Leake is a tenant of PMG Whitlock Ave, LLC at 19 Atlanta Street, Marietta, GA, and he is the owner of and manager of said LLC.

No Action Taken

20110621**Attorneys Fees**

Motion to authorize and direct the attorneys for the City of Marietta to seek enforcement of attorneys fees where appropriate in the case of Yasmine's Entertainment Hall (and other Lee Jaraysi entities) v. the City of Marietta, and any other adjudicated case(s) subject to final review by the city attorneys.

Council Member Goldstein disclosed that "As an entity I own may be contended by someone that it is covered by this matter, I disclose such and I am not participating on this matter."

This Matter was Approved on the Consent Agenda.

Vote: 4 - 1 – 1

Approved

Voting Against: Johnny Sinclair

Abstaining: Philip M. Goldstein

*

20110618**Contract for Sale**

Motion to approve the Contract for Sale of property by Robert O. Herbert and Martha J. Herbert to the City of Marietta, Georgia.

Motion to approve the Contract for Sale of property by Robert O. Herbert and Martha J. Herbert to the City of Marietta, Georgia, conditioned upon the sellers providing a clear title and conditioned upon the City obtaining a satisfactory environmental report.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0

Approved

*

20110619**512 Ramona Street**

Motion to authorize the acquisition of property owned by Thomas M. O'Malley and Joy H. O'Malley on behalf of the City of Marietta by means of eminent domain. A description of the interest to be acquired is attached hereto and incorporated herein by reference, including the legal description of the property and a survey of such property. The city attorney is hereby authorized and directed to take any and all action necessary to acquire such property by virtue of eminent domain, including the right to file any appeals in such case. The Order Authorizing Condemnation attached is incorporated herein by reference.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0

Approved

* **20110645 1180 Franklin Road**

Motion to authorize the acquisition of property owned by Connie, Susan and James A. Tabb on behalf of the City of Marietta by means of eminent domain. A description of the interest to be acquired is attached hereto and incorporated herein by reference, including the legal description of the property and a survey of such property. The city attorney is hereby authorized and directed to take any and all action necessary to acquire such property by virtue of eminent domain, including the right to file any appeals in such case. The Order Authorizing Condemnation attached is incorporated herein by reference.

Removed

* **20110613 BLW Actions of July 11, 2011**

Review and approval of the July 11, 2011 actions and minutes of the Marietta Board of Lights and Water.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 0

Approved

Mayor Tumlin called for discussion regarding the addition of an item to the agenda related to an Administrative Policy #6.

A motion was made in open session by Council member Sinclair to go into Executive Session to discuss potential litigation.

In depth discussion was held.

Council member Sinclair withdrew his motion.

A motion was made by Council member Sinclair, seconded by Council member King, to add an item to the agenda that reads, "Motion authorizing the City Manager, City Attorney, and Public Works Director to approve an Administrative Policy #6 project, with modifications, to address storm drainage issues affecting properties along Wright Street." The motion failed by the following vote:

Vote: 5 - 1 - 0

Failed

(Unanimous consent required)

ADJOURNMENT:

The meeting was adjourned at 9:27 p.m.

Date Approved: _____

R. Steve Tumlin, Mayor

Attest: _____
Stephanie Guy, City Clerk